IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15012 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

DEVRAJ DESHMUKH

Appearance:

1. Special Civil Application No. 15012 of 2004

MR HS MUNSHAW for Petitioner No. 1

MR Hardik Raval for MR NIMESH V DIXIT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 20/12/2004

ORAL JUDGEMENT

Rule. Mr.Hardik Ravel, learned advocate who appears on caveat, waives service of rule on behalf of the respondent. At the joint request of the learned

advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the legality of the award dated 9.4.2004 by which the Industrial Tribunal, Ahmedabad was pleased to partially allow the reference of the respondent-workman. It was directed that the respondent should be treated to have continued in service upto the age of 60 years instead of 58 years and he should be accordingly paid all the benefits including salary for further period of two years.

3. The respondent had raised an industrial dispute which was referred to the Industrial Tribunal, Ahmedabad as reference (IT) No.105 of 2001. The respondent had complained that the date of birth recorded in the service book being 25.5.43 was incorrect and his correct date of birth was 4.10.50. On this basis, the reference came to be made for decision of the Industrial Tribunal as to whether the date of birth of 25.5.43 recorded in the service book of the respondent is incorrect and the same should be corrected to that of 4.10.50 and he should be permitted to continue in service till the age of superannuation on the basis of corrected date of birth and should be paid all other consequential benefits. The statement of claim lodged by the respondent before the Industrial Tribunal also was on similar lines. It was contended that the correct date of birth was 4.10.50 and the petitioner erred in retiring him from service with effect from 31.5.01 on the basis of incorrect date of birth of 25.5.43 recorded in the service book.

4. It may be noted that neither in the terms of reference nor in the statement of claim was there any reference to the age of superannuation being 60 years and not 58 and the entire focus was whether the date of birth of the respondent recorded in the service book was incorrect and that the same should be corrected to 4.10.50 as averred by the respondent.

5. On the basis of the said terms of reference and the statement of claim, the Industrial Tribunal proceeded to decide the reference. In the impugned award, the Industrial Tribunal came to a definite finding of fact that the respondent has not made out any case for correction of date of birth. It was specifically found that the date of birth recorded in his service book was correct and the respondent had made an attempt to continue in service on the basis of his averment that he was born in the year 1950. The Tribunal found that the

documents produced in support of these averments did not inspire confidence. In the last para of the judgment, however, the Industrial Tribunal came to the conclusion that the age of superannuation is 60 years and not 58 and therefore, it proceeded to direct the petitioner herein to give the service benefits of salary and other consequential benefits to the respondents by treating his age of superannuation as 60 and not 58 years.

6. Apparently, the Industrial Tribunal exceeded its jurisdiction in granting the above relief. Firstly, the terms of reference never envisaged any inquiry with respect to the correct age of superannuation of the respondent. It only confined the scope of inquiry to finding out whether the date of birth of the respondent recorded in the service book was incorrect or whether his correct date of birth was 4.10.50 as averred. In the statement of claim also, the respondent had not made out any such case and I am unable to accept the contention of the learned counsel for the respondent that the statement of claim can be interpreted to include such a claim also. Obviously, if the intention on the part of the respondent was to dispute the age of retirement, there would have been clear assertion to that effect in his statement of claim. On the contrary, I find that the only averment in the statement of claim is that his date of birth as recorded in the service book was incorrect and that the same should be corrected. In this view of the matter, it was not open for the Industrial Tribunal to come to a conclusion that the age of superannuation of the respondent was 60 years. There was no opportunity to the petitioner to lead proper evidence to establish its case that the respondent was correctly retired upon reaching the age of 58 years since that was the age of superannuation for him. In this view of the matter, it is not possible to uphold the award of the Industrial Tribunal and the same is required and is hereby set aside.

7. It is contended on behalf of the respondent that the respondent has not received any post retiral benefits even considering that he was correctly made to retire with effect from 31.5.01. If that be so, the petitioner should take immediate steps to ensure that the post retiral benefits are paid over to the respondent as expeditiously as possible and preferably within eight weeks from the date of receipt of a copy of this order. I am sure, the petitioner will not drive the respondent to another litigation and will pay the due as may be available to the respondent along with accrued interest if any.

8. With the above observations, the petition is allowed as aforesaid. Rule is made absolute accordingly with no order as to costs.

Direct service to the respondent.

(Akil Kureshi, J.)

(vjn)